



State of Connecticut COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES

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Promoting Equality and Justice for all People

Testimony to the Legislative Program Review and Investigations Committee Cheryl Sharp, Deputy Director – September 21, 2016

Good morning, my name is Cheryl Sharp and I am the Deputy Director of the Commission on Human Rights and Opportunities. I appreciate the opportunity to speak with you today and I am excited to tell you about all of the good work the agency has been doing.

Executive Director Hughes has just told you/or will tell you about some of the exciting progress the CHRO has made in processing employment discrimination complaints. I would like to share some of the other work the agency is doing. CHRO works to educate the public about human rights issues, advocates for civil rights and organizes community outreach activities. CHRO also monitors state affirmative action plans and does contract compliance on State funded contracts.

Some of the CHRO's Priority Issues are: Enforcement of the anti-discrimination laws in employment, housing, credit transactions, and places of public accommodation; Monitoring compliance on state funded contracts; Eliminating discrimination in housing through enforcement, education, and advocacy; Training municipalities, state employees, and private employers on anti-discrimination laws; Education and outreach; Racial profiling prevention; Bullying prevention; Educating Connecticut youth about civil rights; Coalition and capacity building with other agencies and grassroots organizations; Monitoring state contracts for compliance with discrimination laws and Affirmative Action.

Although the majority of complaints the CHRO processes are employment discrimination complaints we also have a very vigorous housing discrimination unit which handles all inquiries that are received from the public by the CHRO related to residential housing. The housing unit's main responsibility is to take and process complaints of housing discrimination that fall under Connecticut's anti-discrimination statutes. The unit assists individuals in filing their complaints and investigates complaints to determine whether there is reasonable cause to believe the law has been violated. Staff then attempts to remedy any probable violations by means of mediation and conciliation and, if unsuccessful, prepares the cases for formal prosecution by the Commission's legal department.

The unit works directly with our federal counterparts at the Department of Housing and Urban Development (HUD) to conduct joint investigations under federal housing discrimination law. The Housing Discrimination Unit is also under contract to investigate and conciliate cases filed solely with HUD in order to increase response times to complaints.

In addition to their investigatory duties, the unit also provides education and outreach to the public about housing discrimination and the obligations of landlords, realtors, the media, and others under these laws. Hundreds of landlords received training over the past year in an effort to increase compliance and eliminate housing discrimination.

The Housing Discrimination Unit had an increased number of settlements over the past year. Greater use of pre-investigatory mediation has helped both tenants and landlords to resolve their

issues before expenses mount, ensuring efficient justice for the residents of Connecticut. Successful agreements and settlements have included securing housing for complainants, rent adjustment, pet accommodations, disability accommodations, and more.

The Commission is aware that there is a group of landlords who would like to change the investigative practices of the agency. The changes proposed by the CT Property Owners Alliance ("CTPOA") are damaging to our relationship with our federal partner the U.S. Department of Housing and Urban Development ("HUD"). Further, the changes are detrimental to the fair and impartial investigative process of the Commission.

The investigative process of the Commission is derived from the agency's relationship with HUD. As a substantially equivalent agency to HUD, the state of CT is paid by HUD to investigate and prosecute complaints of housing discrimination. Accordingly, the Commission process must mirror the HUD process in order to maintain our substantially equivalent status. The state is paid several hundreds of thousands of dollars per year to investigate and prosecute fair housing complaints. That is money paid directly into the general fund.

The first change suggested by CTPOA is to allow a complainant only one time to seek reconsideration of a no reasonable cause finding. By Commission regulation § 44a-54-62a a complainant can seek reconsideration of a no reasonable cause finding. This is a one-time event per no reasonable cause finding. Should a reconsideration request be granted by the Legal Division, the complaint would go back to the housing unit for processing based on the instructions by the granting attorney. Once the investigator completes the instructions, the investigator would then issue a new finding. If the finding is again a no reasonable cause determination, the complainant would again, by regulation, have the right to seek reconsideration. This is not feasible. Further, this is not a second bite at the apple, but a whole new no cause finding in which a complainant would potentially have a new set of grounds to seek reconsideration that did not exist at the time of the first reconsideration request.

The second proposed change by CTPOA is to allow a Respondent to file an answer not under oath. Currently, a Complainant is allowed to file a complaint not under oath but the Respondent is required to file an answer under oath. The CHRO will work with CTPOA to have this change made to statute.

The third proposed change by CTPOA is to elevate the burden of proof at investigation from a reasonable cause standard to a preponderance of the evidence standard. The standard used by the Commission is required by HUD as part of the federal statute 42 U.S.C. 3610 (g). Further, a preponderance of the evidence standard is a trial standard used at public hearing or in superior court not a neutral investigation at the Commission. The state which currently is in a financial crisis would stand to lose close to a half million dollars.

The fourth proposed change is a screening process prior to a full investigation (case assessment review) similar to that used by the Commission for public accommodation and employment complaints. Again, HUD does not use a screening process prior to full investigation of complaints. Diverting from HUD process would jeopardize the substantial equivalency of the Commission.

The fifth proposed change is to require testers to identify themselves and announce their connection to the agency they are affiliated with. Testing is meant to be anonymous. It is a vital enforcement tool used by private fair housing organizations and again funded by HUD. In 42 U.S.C. 3616(b)(2)(A) private enforcement initiatives funded by HUD include, “carry out testing and other investigative activities...” Testers are defined by the United States Supreme Court as “testers” are individuals who, without an intent to rent or purchase a home or apartment, pose as renters or purchasers for the purpose of collecting evidence of unlawful steering practices.” Havens Realty Corp. v. Coleman, 455 U.S. 363, 373, 102 S. Ct. 1114, 1121, 71 L. Ed. 2d 214 (1982). The purpose of testing is to gather evidence of potential housing discrimination. If the tester identified themselves prior to conducting the test the intent of gathering evidence would be completely lost.

As part of the fifth change, CTPOA want alleged “secret tape recordings” not to be permitted. There are statutes that dictate what is illegal regarding tape recordings that are not under the umbrella of the Commission. The Commission takes in all evidence provided by the parties during the investigative phase and determines its probative value prior to the final determination.

It is imperative that the Commission remain substantially equivalent to HUD. That requires that we keep our current process in place.

Shifting gears, our affirmative action unit monitors and enforces affirmative action laws and regulations. A diverse workforce benefits employers immensely. As our nation’s human capital continues to grow more inclusive of women and racial and ethnic minorities, workplaces that are committed to achieving a diverse workforce will benefit from a wider and more qualified pool of employees. The State of Connecticut is committed to the goal of attaining a diverse workforce. Legislation has passed requiring state agencies to file Affirmative Action Plans with the Commission and make efforts to recruit qualified minority applicants.

The AA Unit continues to monitor and enforce affirmative action laws and regulations while actively engaging in campaigns against the weakening of Connecticut’s commitment to diversity. AA Unit staff have provided 282 technical training opportunities to Affirmative Action Officers during the last fiscal year. Forty-four plans were submitted for review over this time span, thirty-five of which were approved, four of which were disapproved, and two of which were conditionally approved. Commission staff continuously works with agencies whose plans do not meet the statutory requirements to ensure they come in to full compliance with the law

Our contract compliance unit monitors state funded projects. This past year has seen big changes for contract compliance law in Connecticut. Last summer, the Legislature removed the municipal exemption for state-funded public works and quasi-public agency contracts and compliance with the state’s anti-discrimination laws. Previously, municipal public works and quasi-public agency contracts included no obligation to solicit bids from small and minority owned businesses. This created the opportunity for discrimination in contracting with taxpayer funds. The changes to the law have removed that exemption.

The new statutory changes have only recently taken effect, but the Contract Compliance Unit has already stepped up its efforts to ensure businesses throughout the state have the knowledge they need to comply with Connecticut’s anti-discrimination laws. Commission staff conducted 371 Technical Assistance sessions throughout the year for contract compliance purposes alone. Online resources and guides have been created to make compliance easier for all parties involved. The

Commission received 273 new contract compliance plans to review over the year. The Commission was involved with over **\$750,000,000** in state contracts over the course of 2015.

These numbers are expected to dramatically increase in the near future as municipalities and quasi-public agencies begin issuing more contracts, resulting in small and minority businesses having greater opportunities to participate in Connecticut's economic growth. Due to procedural changes initiated by the agency and by the legislature, an impressive 2228 cases were closed by the regions and the legal division. This marks a dramatic 58% increase in case closures from five years ago.

Over this same time, the Commission's regional offices took in a total of 2169 complaint filings in 2014-2015. This a 4% increase from the 2009-2010 filing period.

In 2015, the Legal Division closed 475 cases. Fifty of those closings were public hearings or court cases. The Legal Division had over \$2.5 million dollars in negotiated settlements, including several individual cases settling for over \$100,000. Commission attorneys have also become more involved with Affirmative Action Plan and Contract Compliance oversight. This has led to faster response times for contractor questions and issues.

Some notable legal decisions that the CHRO legal division was involved in 2015 include: Obergefell v. Hodges in which the Supreme Court of the United States struck down bans on gay marriage across the nation. The Commission is proud to have helped the court reach this decision by signing on to an amicus brief arguing for an end to these bans as contrary to both the U.S. Constitution and human dignity. In Trusz v. UBS Realty Investors, LLC, the Connecticut Supreme Court provided greater protections for whistleblowers under Connecticut law "to the greatest extent possible, consistent with the legitimate interests of the employer" in the case Trusz v. UBS Realty Investors, LLC. The Commission filed an influential amicus brief in the case arguing for greater protections for Connecticut's workers. Also, in Tomick v. United Parcel Service, Inc., the Connecticut Appellate Court ruled this year that punitive damages are not available for employees under Connecticut's anti-discrimination statutes. The Commission filed an amicus brief arguing that such damages are an available and appropriate remedy for our state's workers that have been subject to discrimination. The case is currently being appealed to our state's Supreme Court and the Commission is once again filing briefs in support of Connecticut workers.

Connecticut law prohibits discrimination in employment, housing, public accommodations, and credit transactions. In an effort to eliminate discrimination in employment in the state, the Commission launched its Business Training Institute. Commission attorneys provide free training for employers regarding state and federal anti-discrimination laws. The Commission has conducted trainings for: The Department of Labor Fair, a private association of employers in Mystic, Insurance companies and their clients in Cromwell, The Trailblazer Company, a private company in East Hartford, Local high schools having issues with cyberbullying and racial slurs, The Transgender Lives Conference, Community sessions in the Regional Offices, Municipal police departments across the state, The U.S. Office of Probation, Landlords and realtors across the state, The Coalition for Healthy Homes, Public schools across the state and many, many, more.

Additionally the CHRO hosted informational sessions on its complaint process for the general public at venues such as our state's public libraries in Hartford and New Haven.

We Hosted Kids Speak, an event where speakers and students had the chance to gather to discuss civil rights issues at the University of Connecticut School of Law with a large turnout of three hundred fifty students from across the state. We also hosted the the Connecticut Kids Court essay contest was held at the state capitol.

The Deputy Director of the Commission and the Waterbury Regional Manager gave a presentation about discriminatory bullying at a mosque in Meriden that had been vandalized by bullets. The Commission presented a School to Prison Pipeline event which featured a panel discussion with a keynote address from Governor Dannel Malloy on the issue of the school-to-prison pipeline whereby disproportionately harsh school discipline for minority students feeds them into the juvenile justice system.

The Commission participates in several events commemorating the life and legacy of Dr. Martin Luther King Jr., for example a celebration and informational event at the Yale Peabody Museum in New Haven and the Liberty Bell Ringing Ceremony held at the State Capitol. Additionally, CHRO staff members continue to reach out to undergraduate, graduate, and law students who are interested in learning about the work of the Commission, the agency has attended career fairs at schools such as UConn, Suffolk University, and New York University

The Commission has been focusing on expanding its social media footprint. Social media is a great way to reach our stakeholders. We are currently on Facebook and Twitter, and have our own blog.

The Commission has partnered with my community organizations to help spread our mission. We have partnered with the Governor's Partnership for Prevention and True Colors to present a Webinar on LGBT Bullying Prevention. This was soon after the Commission gave a presentation to the ABA LGBT Section on the status of transgender rights in Connecticut. The Alvin W. Penn Racial Profiling Prohibition Act (CONN. GEN. STAT. § 54-1l and 54-1m) prohibits any law enforcement agency from stopping, detaining, or searching any motorist when the stop is motivated solely by considerations of the race, color, ethnicity, age, gender or sexual orientation. The CHRO has a vital role in enforcing the laws against racial profiling in the state of Connecticut. Several CHRO staff persons are members of the Connecticut Safe Schools Coalition. This group of interested individuals is actively working to reduce the incidents of bullying and discrimination in schools and to create a safe learning environment for students. The CHRO also provides training to schools regarding harassment and bullying. The Commission has been an active participant in IAOHRA, an international organization that brings together human rights agencies from around the world to coordinate efforts and explore avenues for increasing effectiveness and efficiency. Deputy Director Cheryl Sharp was honored at this year's annual conference in Alabama with their Individual Achievement Award for her contributions to civil rights in Connecticut. The Commission has partnered with Connecticut Breastfeeding Coalition along with the Department of Health and the Department of Labor to advocate and expand the right of mothers to breastfeed their children.

As you can see, we have been very busy and hope to continue to expand our education and outreach with a goal of eradicating discrimination in the state. Thank you for this opportunity to speak and I am happy to answer any questions you may have.